



PRICING AND DISTRIBUTION OF DRY GOODS BID #2020-21-02

HEMET UNIFIED SCHOOL DISTRICT
NUTRITION SERVICES
2075 W. ACACIA AVE
HEMET, CA 92545

Contract Terms and Conditions

Initial you have read _____

To: Press Enterprise Attn: Legal Notices Email: Phone:	This Legal Notice is to be published on the following dates: First Publication: May 10, 2020 Second Publication: May 17, 2020
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NOTICE OF INVITATION FOR BIDS

Notice is hereby given that the Hemet Unified School District Nutrition Services, Hemet, CA (Riverside County), will accept formal bids for Bid Number 2020-21-02 for the procurement of the following:

**Pricing and Distribution of Dry Goods for the
Hemet Unified School District Nutrition Services**

Sealed bids must be delivered no later than **10:30 AM Pacific Time on Tuesday, June 16, 2020** to Hemet Unified School District Nutrition Services, Attn: Gayle Goff, 2075 West Acacia Avenue, Hemet, CA 92545.

Companies interested in bidding should request appropriate documents from Gayle Goff at the address listed above, email at lgoff@hemetusd.org, or download from the district’s website. Documents are located at www.hemetusd.org, Purchasing Department, and select “Active Bids”. For assistance accessing documents, contact Ms. Goff at (951) 765-5100 x 5323. The Hemet Unified School District Nutrition Services is not responsible for bids sent via U.S. Mail, common carrier, or any other delivery service. All bids are due in Nutrition Services by the posted or advertised closing date and time. It is the bidder’s responsibility to ensure that their bid is delivered to Nutrition Services.

Bids will be opened via Zoom at **10:31 AM on Tuesday, June 16, 2020**, and to view bid opening:

1. Click this URL to start or join Zoom:

<https://hemetusd-org.zoom.us/j/83932045223?pwd=SVh0VEgwrFF2eTMzVWU2QVB3a2RtUT09>
2. Or, go to <https://zoom.us/join>
 - a. Enter Meeting ID: 839 3204 5223
 - b. Password: I1Nl8Z6g4e

To listen to the audio portion of the bid opening:

1. Dial: 1- 669 900 6833
2. Meeting ID: 839 3204 5223
3. Password: 872927

The Hemet Unified School District Nutrition Services reserves the right to reject any and all bids. No bidder may withdraw their bid for a period of ninety (90) days after the date set for the opening of bids. Refer to the formal bid documents and specifications for additional information, terms, and conditions.

Janet Jungnickel
Director of Nutrition Services

Bid Submission Deadline	June 16, 2020	10:30 AM PT
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**HEMET UNIFIED SCHOOL DISTRICT
INVITATION FOR BID #2020-21-02**

Invitation for Bid Signature Page

This Invitation for Bid (IFB) is for the pricing and distribution of dry goods for Nutrition Services within the Hemet Unified School District. Nutrition Services is a non-profit business services department with over 200 dedicated professionals that are responsible for the operation of school nutrition programs and a central production warehouse facility that is 70,000 square feet and serves 27 satellite locations.

Please bid your lowest, fixed prices for the items on the attached Bid Worksheet.

Submit all bids in a sealed envelope showing the Company Name, Bid Number, Opening Date, and Opening Time on the outside. Bids must reach the Hemet Unified School District Nutrition Services, at the address listed above by the time and date listed above. Follow the **Bidder's Checklist** to assist with ensuring a complete bid package.

Sealed bids must be delivered no later than **10:30 AM on Tuesday, June 16, 2020** to: Hemet Unified School District Nutrition Services, Attn.: Gayle Goff, 2075 West Acacia Avenue, Hemet, CA, 92545.

Companies interested in bidding should request appropriate documents from Gayle Goff at the address listed above, email at lgoff@hemetusd.org, or download from the district's website. Documents are located at www.hemetusd.org, Purchasing Department, and select "Active Bids". For assistance accessing documents, contact Ms. Goff at (951) 765-5100 x 5323. The Hemet Unified School District Nutrition Services is not responsible for bids sent via U.S. Mail, common carrier, or any other delivery service. All bids are due in Nutrition Services by the posted or advertised closing date and time. It is the bidder's responsibility to ensure that their bid is delivered to Nutrition Services.

Bids will be opened via Zoom at **10:31 AM on Tuesday, June 16, 2020**, so please follow directions provided on the notification.

The Hemet Unified School District Nutrition Services reserves the right to reject any and all bids. No bidder may withdraw their bid for a period of ninety (90) days after the date set for the opening of bids. Refer to the formal bid documents and specifications for additional information, terms, and conditions.

If further clarification is needed, call Gayle Goff at the Hemet Unified School District Nutrition Services at (951) 765-5100 x 5323.

By signing this, I certify that I am an authorized representative of the bidder (or individual) and that information contained in this proposal is accurate, true, and binding upon the bidder.	
Company Name	
Signature of Company Official	
Name of Signer	
Title of Signer	
Email Address	
Complete Mailing Address	
City, State, Zip	
Phone Number	
Fax Number	
Date	

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**HEMET UNIFIED SCHOOL DISTRICT
INVITATION FOR BID #2020-21-02**

Bidder's Checklist

REQUIRED ITEMS:

1. Invitation for Bid Signature Page
2. Certification Regarding Lobbying
3. Certification Regarding Debarment and Suspension
4. Non Collusion Affidavit
5. Certification on Drug Free Workplace
6. Iran Contracting Act
7. References
8. Buy American Certification
9. Pricing Worksheet with Signature
10. Proposed Alternate Worksheet with Signature

Submit required documents listed and failure to submit may deem your bid as non-responsive.

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**HEMET UNIFIED SCHOOL DISTRICT
INVITATION FOR BID #2020-21-02**

NUTRITION SERVICES

CONTRACT TERMS AND CONDITIONS

TIME AND PLACE OF BID SUBMISSION

Bids must be received at Hemet Unified School District, Nutrition Services Department, 2075 West Acacia Ave. Hemet CA 92545, no later than **Tuesday, June 16, 2020 at 10:30 AM**. Bids received after that time will not be considered and will be returned to bidder unopened.

CONTRACT DOCUMENTS

The complete contract will include the General Instructions and Conditions, Contract Terms and Conditions, the bid of the company and its acceptance by the District, Provisioning Contract, and the Purchase Order issued by the District, any of which shall be interpreted to include all provisions of the other documents as though fully set forth therein.

Questions or comments regarding this IFB must be put in writing and are to be emailed to lgoff@hemetusd.org. Questions from the bidders' and the answers will be published in an Addendum.

PREPARATION OF BIDS

All pages of the Bid must be completed and submitted in ink or typewritten. Both unit price and extension (where applicable) for all line items must be shown where required on the *Pricing and Proposed Alternate Worksheet*. Prices should be stated in units specified herein. All forms must be thoroughly completed and signed by the prospective bidder. A Bidder Checklist is included to assist bidders in ensuring that a complete bid package is returned.

BID SIGNATURES

All proposals must show the company name and must be signed by a responsible officer or employee fully authorized to bind the organization to the terms and conditions herein. Obligations assumed by such signature must be fulfilled. All signatures must be in original ink.

ERRORS AND OMISSIONS

No erasures are permitted. Mistakes may be crossed out and corrections made adjacent but must be initialed in ink by person signing the bid. Verify your bids before submission as they cannot be corrected after being opened or withdrawn until after the specified time period has elapsed.

MODIFICATIONS

Changes or additions to the bid form, alternate bids, or any other modifications of the bid form is not allowed.

FAILURE TO BID

If you do not wish to bid on any item, please mark "no bid" on IFB Signature Page, sign and email form to lgoff@hemetusd.org or mail form to Hemet Unified School District Nutrition Services, Attn.: Gayle Goff, 2075 West Acacia Avenue, Hemet, CA, 92545 , otherwise your name may be removed from the bidder's mailing list.

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ACCEPTANCE OF BIDS

The right is reserved to reject any or all bids and to accept or reject any line items thereon and to make any combination of line item awards. Bids may be rejected on grounds of non-responsiveness or non-responsibility. Bids are subject to acceptance at any time within ninety (90) days after opening of same unless otherwise stipulated.

- a. District reserves the right to purchase processed USDA Foods and commercial items.
- b. Bidders may provide bid pricing on any food items that are USDA Foods end products and/or are the commercial equivalent of such products to be considered.

Unsolicited items, services, or incentives offered as part of the bid response will NOT be evaluated or considered in the award process.

WARRANTY OF QUALITY

The successful Bidder or his assigned agent shall guarantee the food products against all defects.

PRICING

Pricing to the district shall be net of all applicable rebates, discounts, allowances and credits which are attributable to Hemet USD's business, including but not limited to the District's purchase volume, and sales information for which, in part, the rebates, discounts, allowances and credits are based, FOB Destination. All freight charges must be included in the bid price.

All pricing and fees shall remain firm and fixed for the duration of the agreement term, except as provided for in the Price Adjustment section of the Contract Terms and Conditions. Prices shall NOT include sales tax but sales tax shall be listed separately if applicable.

ONLY FIXED PRICING WILL BE ACCEPTED AND BIDS WITH PERCENTAGE MARK-UP WILL BE CONSIDERED NON-RESPONSIVE.

Bidder must indicate brand name, manufacturer and manufacturer code, and case count or pack size and samples for testing for each item identified as an "or equal" on the *Proposed Alternate Worksheet*. A bid "as specified" will not be accepted.

Errors in price computation on the Pricing Worksheet does not relieve the Bidder from holding price. Veracity of prices submitted in this Bid is the sole responsibility of the Bidder.

ADDITIONS (Using Market Basket Analysis)

During the term(s) of a contract awarded under this solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit the Program. Both parties agree that the aggregate value of added purchases during each year of the contract, if renewable, shall not exceed 10% of the estimated total value of the contract. The total value of the contract must be agreed upon and the dollar value listed in every contract and contract renewal. Such additions may be included in the awarded contract list during the contract renewal through a contract amendment, and the total contract value adjusted accordingly. For each contract renewal, the total actual value of the contract in the preceding year and the additions made during the contract term, will be the basis for determining the maximum dollar amount not to exceed 10% of additional goods that will be allowed during the next contract renewal year. (Reference # USDA FD-144, Market Basket Analysis CNP-04-2018)

SAMPLES AND TESTING

If the Bidder is proposing items/brands other than those specified or if no brand is indicated on IFB documents, the following shall apply:

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- A. Complete specifications, descriptions, and photographs/sketches shall be submitted with the Proposal.
- B. Samples must be submitted to the Hemet Unified School District, 2075 W. Acacia Ave, Hemet, CA. 92545 at least 7 business days before closing date of this Proposal.
- C. Samples must be submitted free of expense.
- D. All packages containing samples must be clearly labeled Bid # and each sample shall be clearly identified as to the Proposal number, Bidder Name, Manufacturer name, and the corresponding item numbers on the *Pricing Worksheet* under which it is to be considered.
- E. Samples which do not comply with these instructions may not be considered for award.
- F. All samples become the property of the District unless the Bidder prearranges return shipment. The final decision as to whether the material or product is the equal to that specified shall be made by the School District. In all cases when a sample is taken from a shipment and sent to a public testing laboratory and the test shows that the sample does not comply with the specifications, the bidder shall pay the cost of the tests. In all cases the District reserves the right to make tests it deems necessary.

BRANDS, SIMILAR PRODUCTS, “OR EQUAL”

Whenever Hemet Unified School District refers to a product by describing a proprietary product or by using the name of a manufacturer or brand name, the term “or equal” if not inserted shall be implied, as applicable. The specified product shall be understood as indicating type, function, minimum standard of design, efficiency and quality desired and shall not be construed as to exclude other manufactured products or comparable quality, design and efficiency, as applicable.

The district reserves the right to determine if a product is “or equal” based on student preference, nutritional analysis, list of ingredients, and/or allocation of entitlement for USDA Foods.

PATENT INFRINGEMENTS

The successful Bidder(s) shall hold the Hemet Unified School District, its officers, agents, servants and employees, harmless from liability of any nature or kind on account of use of any copyrighted or uncopied composition, secret process, patented invention, article, or appliance, furnished or used, under this Bid.

PARTICIPATION BY OTHER DISTRICTS AND CONTINUING CONTRACT

Other districts in the State of California may procure items off this bid under the same terms and conditions stated in this bid. REF: PCC 20118 Said school district public entities shall process their purchase orders and warrants directly to the successful bidder upon agreement by the District and the Bidder.

AWARD OF CONTRACT

The District reserves the right to contract with any Bidder responding to this IFB, to reject any proposal as non-responsive, and to not contract with any Bidder for the services described herein, whichever is determined to be in the best interest of the District. A successful bidder **must** be able to deliver the items within the required delivery schedule in order to be declared responsive to this proposal.

The District reserves the right in its absolute discretion to accept bids, or any part of bids, as deemed necessary for the best interest of the District. The District reserves the right to reject any one or all proposals, to waive any informality in the bids or in the bidding, to judge the merit and qualification of the materials, equipment and services offered, and to accept whatever proposal is deemed to be the lowest responsible bid meeting all other evaluation criteria specified in the bid.

The District reserves the right to award to one or more Bidders as determined to be in the best interest of Hemet Unified School District.

Subject to all provisions herein, Award will be made by **ITEM** to the lowest responsive bid and responsible bidder meeting all the terms and specifications of the bid documents.

If contractual agreement cannot be reached with the apparent successful Bidder, the District may cancel the award and award item(s) to the next lowest responsive bidder.

MINORITY AND WOMEN OWNED BUSINESS

The USDA encourages procurement opportunities for Women Owned and Minority owned businesses. Those that meet the Federal standards will receive an additional 10 points on the evaluation. To view requirements see: www.usda.gov Executive order 12138 and Public Law 103-355.

PROPOSAL WITHDRAWAL

Bid proposals may be withdrawn by the bidder prior to the time fixed for opening of the bids, but may not be withdrawn for a period of ninety (90) days after the opening of bids.

PERIOD OF CONTRACT

The term of this agreement will be from July 1, 2020 to June 30, 2021. Minimum contract term is twelve (12) months. Contract may be extended upon mutual consent between the District and bidder thereafter for two (2) additional twelve (12) month periods, for a maximum of three (3) years, in accordance with Education Code Section 17596. The Board of Education reserves the right to terminate the contract effective at the end of each annual period and is under no obligation to extend the contract.

BID PROTESTS

Any Bidder that has duly submitted a Bid for the IFB may protest the process used to seek bids for the goods/service, another bid for the goods/service, and/or the intended award of the contract for the goods/service only by filing a written protest with the District. In order for a Bid Protest to be valid and be considered by the District, the Bid Protest:

1. Must be received by the Director of Purchasing not later than 4:00 P.M. on the fifth calendar day following the opening of bids;
2. Must clearly identify the bidder that is filing the Bid Protest, together with the name, address and telephone number of the person representing the Bidder for purposes of the Bid Protest;
3. Must clearly identify the specific Bid/IFB, process, or other matter that is subject of the Bid Protest;
4. Must clearly identify the specific provisions of all documents relevant to the Bid Protest;
5. Must clearly identify and describe in detail the specific basis for the Bid Protest and all facts relevant thereto;
6. Must clearly identify and describe in detail all arguments in support of the Bid Protest, including, without limitation, citations to applicable statutory requirements; and
7. Must be submitted with all documentation the bidder desires to submit that is relevant to and supports the basis underlying the Bid Protest.

If a Bid Protest does not comply with each and all of the foregoing requirements, the District will reject the Bid Protest as invalid. Upon receipt of a valid Bid Protest, the District and/or its legal counsel will

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review the Bid Protest and all relevant information and documents and will provide a written response to the protesting bidder setting forth a recommendation for District Governing Board action in response to the Bid Protest. A Bidder may at any time withdraw its Bid Protest. In response to a Bid Protest that a Bidder has not withdrawn, the Governing Board may decline to award the contract, may award the contract to a bidder other than as previously intended, or may award the contract to a bidder as previously intended despite the Bid Protest. Such action by the Governing Board shall be a condition precedent to the filing of any claim or demand and to the initiation of any action (legal or equitable) or other proceeding arising from the matter(s) protested.

Compliance with the foregoing Bid Protest requirements is mandatory. Each bidder that desires to protest must file its own Bid Protest in accordance with the foregoing requirements, and no bidder may rely on a Bid Protest by another bidder as a means of satisfying such requirements. Compliance with the foregoing requirements is the sole and exclusive means of protesting a Bid/IFB, the Bid process and/or the intended award of the contract, and failure to so comply shall be deemed and construed as a waiver of any and all rights the bidder may have to pursue a claim, demand or action arising from any such matter.

QUANTITIES

The District does not guarantee orders in these amounts nor shall orders be limited to these specific figures. This is an indefinite-quantity bid; however, the quantities listed are a good faith estimate. Bidders shall not specify minimum or maximum quantities or charges for order types, unless specifically allowed on the bid form. Unlimited orders within the term of the contract shall be allowed to the District at prices quoted. Estimated Quantities are for the purposes of forecasting and not to be considered a promise to purchase.

The provisions of the contract shall in no way prohibit the District from making an incidental purchase from another supplier for the same services listed herein.

The District shall not be obligated to purchase or reimburse the successful Bidder for any inventory of any products should purchases vary from the anticipated purchase patterns or if agreement expires or is terminated.

VEHICLE DELIVERY CONDITIONS

All vehicles and containers used for transporting food items must be kept clean and maintained in good repair and condition in order to protect foodstuffs from contamination, and must be designed and constructed to permit adequate cleaning and/or disinfection.

Vehicles must be capable of maintaining food items at appropriate temperatures and, where necessary designed to allow those temperatures to be monitored. This means that vehicles that transport perishable food items are either frozen or refrigerated must be equipped with appropriate refrigeration systems in order to maintain products at appropriate temperatures. Dry goods and refrigerated processed foods must arrive at an internal temperature of at least 41°F or lower.

Refrigerated egg products must arrive at an internal temperature of at least 41°F or lower.

Frozen food items must arrive frozen solid without any signs of being thawed and refrozen. Ice cream should be received at 8°F or lower.

Dry items and canned good must be received between 50°F and 70°F. Canned, jar and bottled goods must be in good condition with no broken seals, dents, rust, cracks, swollen ends or leakage of any type. Dry items must be received dry with no tears, puncture, holes or signs of moisture.

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Additionally, products will be delivered free of infestation including but not limited to larvae and rodent droppings.

Any product that fails to be delivered within these parameters will be rejected.

PRODUCT QUALITY CONTROL

The District reserves the right to discontinue service of all or any portion of any contract resulting from this proposal for any reason determined by the District to be detrimental to the health and welfare of the students and school personnel, or failure to meet contract specifications or wholesomeness standard, and to hold the Bidder in default.

All products received under this contract shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which Processor's plant is located or by the applicable federal standards, whichever is higher.

Successful Bidder(s) shall provide products with a Hazard Analysis Critical Control Point (HACCP) system in place. Additionally, Bidder(s) shall ensure that all products received under this contract shall be prepared in accordance with the health and sanitation standards for the County of Riverside or local city/county agency in which product was produced, State of California, and/or Federal Government, whichever is higher.

Successful Bidder(s) shall follow appropriate procedures for First in First Out (FIFO) stock rotation system. Products received shall not have a shelf life or expiration date less than **six months** from the date of delivery.

In the event of product contamination issue, successful Bidder(s) shall provide trace back capabilities for all products to the point of origin. Evidence of such procedures should be submitted with proposal.

INFERIOR PRODUCT

The successful Bidder(s) agrees to permit inspection of the delivered items by a representative of the District's Nutrition Services Department with the right of rejection of inferior merchandise. The District's decision shall be final.

PACKAGING

Cases and packages shall be so constructed as to ensure safe and sanitary transportation to point of delivery. Damaged cases or packages may be rejected and returned for credit or immediate replacement, at no cost to the District for product or freight.

All packaging materials shall be FDA approved to meet all pertinent State and Federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, or color to the product.

LABELING

All ingredients must be declared on the product label and conform to the Food Allergen Labeling and Consumer Protection Act as required by the Food and Drug Administration. Labels must list the presence of ingredients which contain: protein derived from milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, or soybeans.

NUTRITIONAL AND PRODUCT CREDITING INFORMATION

In order to accommodate the computerized menu system utilized by the Nutrition Services Department, the successful Bidder shall be required to provide, electronically, a complete nutrient analysis of all

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products awarded and/or Nutrition Fact Label. The nutrient information may be obtained from an independent laboratory.

The following information will be required from the manufacturer: weight (gm), water content (gm), calories (Kcal), protein (gm), carbohydrates (gm), fat (gm), polyunsaturated fat (gm), saturated fat (gm), trans fat (gm), sodium (mg), cholesterol (mg), dietary fiber (gm), vitamin A (IU), vitamin C (mg),calcium (mg), and iron (mg).

ALL PROCESSED FOODS MAY NOT CONTAIN ANY ARTIFICIAL TRANS FAT.

In addition, the successful Bidder(s) shall provide current product formulation statements which detail the meal pattern contributions for Meat/Meat Alternates, Grains/Breads, Fruits and Vegetables. The product formulation statements shall conform to the requirements of United States Department of Agriculture.

Successful Bidder(s) shall notify Nutrition Services whenever there is a product and/or ingredient change in any item provided to the District. If any product changes occur, new ingredient statements, nutritional statements, and product formulation statements must be provided to the Nutrition Services Department.

PRODUCT SUBSTITUTION AND DISCONTINUED ITEMS

The District will not allow substitutions without prior approval. In the event successful Bidder is unable to deliver an item as specified in this contract, notification of shortage must be made orally or by electronic mail **at least 48 hours** prior to scheduled delivery to the Purchasing Specialist at phone number 951-765-5100 ext. 5323. An equal or better substitute product must immediately be made available to the District for approval and subsequent distribution to the cafeterias, at no additional charge to the District for product, freight, or redelivery to District sites. Substitutions in quality or quantity must receive prior approval from the Purchasing Specialist at the District Nutrition Services office (951-765-5100 ext. 5323) in order to qualify for payment. **When substitutions do occur, Bidder shall provide nutritional statements, ingredient listings and the product formulation statements of the replacement product to the Purchasing Specialist.**

If substitution is unavoidable due to market conditions, successful Bidder must provide equivalent item for District approval at no additional cost to the District for product or freight. Authorization of a substitute product shall be at the sole discretion of the District.

Successful Bidder(s) shall immediately notify Nutrition Services if they become aware of any product changes or reformulation. **When product changes do occur, successful Bidder(s) shall provide nutritional statements and ingredient listings of these products to the Purchasing Specialist.** Failure to provide notification to Nutrition Services of any product changes or reformulation, of which the successful Bidder is aware of, may result in termination of the contract. Refer to the Nutritional Information Section.

The successful Bidder must provide the specified product or an acceptable substitute, as determined by the District. If, as a result of failure to deliver specified product in a timely manner, the service of meals fails to contain the required components of a reimbursable meal, successful Bidder shall be required to reimburse the District for the full value of all of the identified meals, as determined by the National School Lunch Program. The District shall make financial restitution within 60 days of written request.

DELIVERIES

Actual delivery of the product or services shall be coordinated with the District. For the Nutrition Services Warehouse, located at 2075 West Acacia Ave., Hemet, CA 92545, delivery is to be made on an as needed basis between the hours of 9:00 am and 2:00 pm.

For the cafeteria locations, deliveries are to be made on an as needed bases between the hours of 6 am and 10:30 am during the school year and all items must be available during the summer months in the quantities required by the District, to all sites with continuing operations.

- Acacia Middle School
- Dartmouth Middle School
- Diamond Valley Middle School
- Hemet High School
- Rancho Viejo Middle School
- Tahquitz High School
- West Valley High School

The District reserves the right to make additions to, or deletions from, the specified delivery locations to be served at any during the period of the contract, and revise delivery times as required.

In the event the successful Bidder(s) sub-contracts the delivery of products to a third party carrier, the successful Bidder(s) shall be responsible for ensuring that the third party carrier adheres to all applicable contract terms, including but not limited to delivery times, vehicle delivery conditions, safety and security.

The School District may discontinue service upon 30-day notice for convenience or reason of unsatisfactory service. **FAILURE TO DELIVER IN ACCORDANCE WITH THESE SPECIFICATIONS SHALL CONSTITUTE UNSATISFACTORY SERVICE.**

PALLETS

All deliveries in excess of 20 cases must be delivered on pallets. Deliveries shall be made on a standard wooden pallet 40”x 48”, and all items shall be unitized, e.g. all like items on same pallet. Bidders not in compliance with this requirement will be required to transfer their product onto a District provided 40”x 48” pallet at the time of delivery. Deliveries made on specified pallet will be exchanged at the time of delivery.

DELIVERY SLIPS

Delivery slips will be furnished with each delivery, in duplicate, as follows:

- Original - signed by person receiving material and retained by Manufacturer
- Duplicate - shall be left at each location – Nutrition Services copy

INVOICES

Invoices shall be submitted to the Hemet Unified School District, Nutrition Center, 2075 West Acacia Avenue, Hemet, CA 92545, Attention: Accounts Payable and shall contain the following information: purchase order number, item number, item description, quantity, unit price, extended total, and applicable discounts for items delivered. Failure to enter any of the above information on the invoice may cause delay in payment. Payment shall be made on partial deliveries accepted by the District.

Hemet Unified School District will be participating in the Child and Adult Food Program. Items purchased for this program must be under a separate account and invoiced separately from other purchases.

PAYMENT

Payment will be made within 30-60 working days after actual delivery of goods to the required destination as outlined in the **DELIVERIES** conditions and receipt of invoices acceptable to the District. In the event of pricing or invoice discrepancies, payment may be delayed until such time when discrepancies are resolved to the satisfaction of the district.

In addition, successful bidders shall pay manufacturers for goods in a timely fashion.

In accordance with the Office of Management and Budget (OMB) Super Circular, Title 2, Code of Federal Regulations Section 200.441, late payment fees will not be permitted under this contract.

SAFETY AND SECURITY

The successful Bidder(s) shall comply with all District security regulations. Bidder's representatives driving motor vehicles on school grounds must use extreme caution during times when school is in session. Any unusual condition noted by drivers, such as evidence of vandalism, power failure, fire, water damage, gas leak, etc., must be reported to the District Risk Management at 951-765-5100 ext. 2300.

INDEMNIFICATION

The successful Bidder(s) will defend, indemnify and hold harmless the Owner, its governing board, officers, agents, trustees, and employees against and from any and all liability for damages on account of injury to or death of persons or damage to property or delay or damage to another Bidder resulting from or arising out of or in any way connected with the performance by the Bidder of this Agreement and reimburse the Owner for all costs, attorney's fees, expenses and loss incurred by it in consequence of any claims, demands and causes of action which may be brought against the Owner that arises out of the performance by the Bidder. The indemnification shall be in addition to other indemnification contained in the Contract Documents.

INSURANCE

The Bidder's and Sub Bidders' obligation to defend, indemnify and hold harmless the District, Architect, Inspector, the State of California and their officers, employees, agents and independent Manufacturers hereunder shall include, without limitation, any and all claims, damages, and costs for the following: (1) any damages or injury to or death of any person, and damage or injury to, loss (including theft), or loss of use of, any property; (2) breach of any warranty, express or implied; (3) failure of the Bidder or Sub Bidders to comply with any applicable governmental law, rule, regulation, or other requirement; and (4) products installed in or used in connection with the Work.

The Bidder shall provide the insurance as set forth in the contract and as follows:

The amount of comprehensive general liability insurance shall be **\$3,000,000.00** per occurrence for bodily injury, personal injury and property damage. And, subject to the same limit for each person on account of one accident, in an amount not less than **\$1,000,000.00**.

Automobile liability insurance shall be **\$1,000,000.00** per accident for bodily injury and property damage combined single limit.

Worker's Compensation and Employer's Liability shall be set in accordance with sections 3700 and 3800 of the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** per accident for bodily injury or disease.

The Bidder(s) shall also defend, indemnify, protect, and hold harmless Hemet Unified School District and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property which arise from or are connected with or are causes or claimed to be caused by the Bidder's failure to comply with all or of the requirements contained in Education Code section 45125.1, including, but not limited to, the requirement prohibiting Bidder from using employees who may have contact with pupils who have been convicted or have charges pending for a felony as defined in Education Code 45125.1.

PRICE ADJUSTMENTS/INCREASES

Should the Bidder(s) sell these products under the same quantity, terms and conditions, at a lower price during the period of the contract, the price shall be applicable to this District. Failure to advise the District, in writing, within ten (10) days of price reduction to another purchaser, may be cause for cancellation of the contract. In the event a successful Bidder must increase pricing during the term of the contract due to manufacturer increases, the following conditions for price adjustments shall apply. Prices bid herein may increase with the mutual consent of parties involved. The effective date of such increase shall be specified in writing to the District, with no price increase becoming effective less than 30 days from the date of notice. All proposed price increases shall require the submission by the bidder of the manufacturer's national or regional published price list or printed notices of price changes. The District shall review and analyze all requests for price increases, based upon market conditions, and shall determine whether or not the requested price increase is justified. The decision of the District shall be final. All purchase orders placed under this agreement shall be delivered and invoiced at the agreement price prevailing at the time the order is placed, regardless of the actual delivery date.

Fuel surcharges shall not be accepted under this contract and the addition of such charges shall not be permitted during the period of the contract.

CONTRACT RENEWALS

Renewals are contingent upon competitive pricing and upon all terms and conditions of the original contract having been met to the satisfaction of the District. Such renewal will be made by notifying the successful Bidder(s), in writing, thirty (30) days prior to the expiration of the contract. The fixed pricing may be "subject to adjustment" at the beginning of each annual contract period. It is expressly understood that the contract rate increase is not automatic or guaranteed. The Bidder's request to increase the current rate schedule will be evaluated and considered when such adjustments are requested. The District reserves the right to reject any such request and negotiate, re-bid and/or terminate said contract within the provisions of the existing agreement. Increases in the Bidder(s) fixed pricing in this IFB may not exceed the increase in the Consumer Price Index for the Los Angeles region or price increase verified by the labor rate increases justified by increases in labor contracts or State of California Department of Industrial Relations prevailing wage rates. The specific index to be reviewed is the CPI for Los Angeles-Riverside-Orange County, California for the month of each year using the Special Aggregate Index category of "All Items Less Shelter" under the "All Urban Consumers" column.

REFERENCES

As part of the bid evaluation, the District will conduct reference checks to confirm information provided as part of this bid, in order to ascertain the Bidder's qualifications and ability to perform. In

the course of performing its due diligence, the District may perform investigations of Bidder(s) that extend beyond contacting references identified in the bids.

CONTRACT MANAGEMENT

The District will monitor the contract during the term to ensure all contract terms are being met. As part of the process the District will require the Bidder(s) to provide documentation to assist the district in validating contract terms are met. In addition, the Bidder(s) shall submit to District led or third party audits and/or inspections initiated by the District during the term of the contract and for one year following the end of the contract. Audits and/or inspections will serve to ensure compliance with contract terms, food safety guidelines, pricing and billing. Bidder(s) must take steps to correct findings identified during audits and/or inspections, including financial restitution for any pricing or billing errors which may have occurred during the length of the contract period, including extensions.

Bidder(s) will conduct bi-monthly business reviews to review contract performance and resolve outstanding issues in a timely manner.

TERMINATION FOR CAUSE AND CONVENIENCE

Pursuant 7 CFR 1780.75, when federal funds are expended by a member district, the Hemet Unified School District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The Hemet Unified School District also reserves the right to terminate the contract immediately, with written notice to the vendor, for convenience, if in its sole discretion that it is in the best interest of Hemet Unified School District to do so. The vendor will be compensated for work performed and accepted and goods accepted by any member district as of the termination date if the contract is terminated for convenience of the Hemet Unified School District. Any award under this procurement process is not exclusive and the Hemet Unified School District reserves the right to purchase goods and services from other vendors when it is in the best interest of the Hemet Unified School District.

PRODUCT RECALLS

The successful Bidder(s) shall bear all costs incurred by the District resulting from product recall, including, but not limited to, any costs initially incurred for storage and transportation; pickup, transportation and storage of recalled product; and price differential for replacement product, if necessary, as determined by the District. Payment for all costs directly related to product recall shall be made within 30 days of submission of invoice by the District.

ADDITIONAL INFORMATION/CLARIFICATION

Questions or comments regarding this IFB must be put in writing to Gayle Goff at lgoff@hemetusd.org. The information will then be disseminated to all bidders.

NON-COLLUSION AFFIDAVIT

A signed Non-Collusion Affidavit must be completed by the bidder and be submitted as part of the proposal. Proposals without a signed Non-Collusion Affidavit cannot be considered (form enclosed).

DEPT. OF EDUCATION-CHILD NUTRITION DIVISION FORMS

Per the California Department of Education, Child Nutrition and Food Distribution Division, School Nutrition Programs Unit, that attached forms (Suspension and Debarment Certification U.S.

Department of Agriculture, Certificate Regarding Lobbying, Disclosure of Lobbying Activities, Iran Contracting Act Certification Form and Buy American Certification) must **be completed and submitted with proposal. Proposals received without these forms/certifications will not be considered.**

IRAN CLAUSE

If this contracts purchase volume will exceed \$1,000,000.00 the successful Bidder(s) must complete a certification as part of the Iran Contracting Act in accordance with the Public Contract Code Sections 2202-2208. Landed costs are deemed to be the Bidder's costs net of applicable rebates, discounts, allowances and credits which are attributable to Hemet Unified School District's business, including but not limited to the District's purchase volume and sales information for which, in part, the rebates, discounts, allowances and credits are based.

CLEAN AIR AND FEDERAL WATER POLLUTION ACTS

Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to the Federal Rule above, when federal funds are expended by a member district, the vendor certifies that during the term of an award for all contracts resulting from this procurement process, the vendor agrees to comply with all applicable requirements as referenced in Federal Rule above.

BUY AMERICAN PROVISIONS

Federal Regulations require that to the maximum extent possible, only domestic products be purchased consistent with the "Buy American" provisions of Public Law (PL 100-237) when purchasing commodities for the school lunch program. Under the terms of this agreement, Bidder(s) shall provide products and/or product ingredients that have been manufactured or grown in the United States. In certain circumstances, product and/or product ingredients manufactured or grown in other countries of origin may be provided if an acceptable product is not available domestically (i.e. bananas) (Federal Acquisition Regulation Subpart 25.103 & 25.105 (b) (2)).

It is therefore required that bidders responding to this Invitation for Bid indicate whether products offered on this proposal meet the definition of "domestic commodity or product" as stated immediately above. Indication shall be made on the bid items worksheet for this proposal.

RECORD RETENTION REQUIREMENTS

When federal funds are expended by a member district for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR 200.333 for a period of three years after grantees or sub grantees submit final expenditure reports or quarterly or financial reports, as applicable, and all other pending matters are closed.

COMMUNICATION OF AWARD

Bid awards made by the Board of Education shall not become binding upon the School District until communication in writing to the successful Bidder.

LEGAL REQUIREMENTS

All Bidders are required to comply with and be bound by all applicable provisions of law whether or not referred to herein.

DRUG-FREE WORKPLACE CERTIFICATION

Pursuant to Government Code Sections 8350 et seq., the successful Bidder will be required to execute a Drug-Free Work Place Certificate prior to execution of the agreement. The Bidder will be required to take positive measures outlined in the certificate in order to insure the presence of a drug-free workplace. Failure to submit a bid with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the agreement or suspension of payment thereunder. Failure to submit this form, included in this Bid, may result in your Bid being rejected.

FINGERPRINTING/BACKGROUND CHECKS

The successful Bidder agrees to comply with all provisions of Education Code Section 45125.1. Bidder(s) will conduct a criminal background check of all employees, agents, and representatives assigned to the District that will enter the sites and other District facilities for purposes of providing services covered by this bid during normal District hours, and will certify in writing that no such employees, agents, and representatives who have been convicted of serious or violent felonies as specified will have contact with pupils. Successful Bidder(s) will provide the District with a list of all employees providing services pursuant to this IFB. In the alternative, successful Bidder(s) shall agree that all employees, agents, and representatives assigned to the District that will enter the sites and other district facilities during normal district hours shall be accompanied at all times by an individual who has satisfied the fingerprinting requirements of Section 45125.1.

LAWS GOVERNING CONTRACT

This contract shall be in accordance with the Federal Regulations governing Child Nutrition Programs and the laws of the State of California. The parties stipulate that this contract was entered into in the county of Riverside, in State of California.

FORCE MAJEURE

If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Manufacturer, the Manufacturer shall notify the Hemet Unified School District, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to Acts of God, war, or acts of public enemy, acts of any governmental agency in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FEDERAL NONDISCRIMINATION STATEMENT

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave SW, Washington, D.C. 20250-9410; (2) Fax: (202) 690-7442; or (3) E-mail: program.intake@usda.gov. This institution is an equal opportunity provider.

USDA is an equal opportunity provider.

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Procurement Codes of Conduct

I. Purpose:

The United States Department of Agriculture (USDA) and California regulations require agencies that participate in federal child nutrition programs to have a written code of conduct covering procurement practices.

II. Scope:

In accordance with the general procurement standards in 2 CFR, Section 200.318(c), each agency must develop and maintain written standards of conduct to cover potential personal and an organizational conflict of interest. These written standards must govern the actions of agency employees, officers or agents who engage in the selection, award and administration of contracts funded by federal monies.

The School Food Authority must conduct all procurement transactions in a manner that allows full and open competition consistent with the standards stated in 2 CFR, Section 200.319. To ensure objective bidder performance and eliminate any unfair competitive advantage, bidders that develop or draft specifications, requirements, and statements of work, invitations for bid (IFB) or requests for proposal (RFP) must be excluded from competing for the bid.

A School Food Authority employee, officer or agent is prohibited from participating in the selection, award and administration of any contracts supported by federal monies if the employee has a real or an apparent conflict of interest.

A conflict of interest arises when an agency's employee, officer, agent or any member of their immediate family, a partner, or an organization that employs or is about to employ any immediate family member, has a financial or other interest in – or would gain a tangible personal benefit from – from a firm considered for a contract.

California Government Code, Section 87100, states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a financial interest.

III. Procedure:

To maintain these standards, the School Food Authority subscribes to the following principles in the procurement of goods and services. It is essential that all personnel of the School Food Authority conducting business with a bidder will also observe the ethical standards described herein.

- To give first consideration to the goals, objectives, policies and procedures of Hemet Unified School District
- To grant all competitive bidders equal consideration
- To regard each transaction on its own merits to foster and promote fair, ethical and legal trade practices
- To discharge duties impartially to assure fair competitive access to procurement from the Hemet Unified School District by responsible Bidders
- To strive to obtain the maximum ultimate value for each dollar of expenditure

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- To refrain from engaging in unduly influencing the contents of any specifications or procurement standards
- To maintain a zero tolerance for solicitation, demanding, accepting or agreeing to accept a gratuity, personal gift or any offer in connection with any decision, approval, disapproval, recommendation or preparation of a purchase. Public officials should avoid even the appearance of impropriety.

Incentives are not solicited in an Invitation for Bid and bids are awarded based on lowest dollar amount.

- All incentives proposed must exclusively and directly benefit the food service program; incentives that are retained by an agency for nonprogram use, or given to employees or students as a reward for an accomplishment, are not allowed
- Eliminating bidders based on the provision of incentives or points programs limits full and open competition by placing unreasonable requirements on those bidders that are unable or unwilling to provide such incentives
- Bids and proposals that include unsolicited incentives are considered overly responsive and agencies may be required to disqualify overly responsive bids, especially if it causes a material change to the invitation for bid

V. Monitoring:

Officials and employees of state and local government agencies who are designated in a conflict of interest code are prohibited from accepting a gift or gifts totaling more than \$460 in a calendar year per the California Fair Political Practices Commission. In the San Bernardino City Unified School District's Board Bylaw 9270, a list is provided of the designated employees of the School Food Authority that are under the district's conflict of interest codes. Annually each designated employee will file a Statement of Economic Interest Form 700.

General gift exceptions or items not to report on the Form 700 are below.

1. Informational material provided to assist you in the performance of your official duties, including books, reports, pamphlets, calendars, periodicals, videotapes, or free admission or discounts to informational conferences or seminars.
2. Personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6); Regulation 18942(a)(6).)
3. Free admission, and food and nominal items (such as a pen, pencil, mouse pad, note pad or similar item) available to all attendees, at the event at which the official makes a speech (as defined in Regulation 18950(b)(2)), so long as the admission is provided by the person who organizes the event. (Regulation 18942(a)(11).)
4. Benefits received as a guest attending a wedding reception where the benefits are the same as those received by the other guests at the reception. (Regulation 18942(a)(15).)
5. Bereavement offerings, such as flowers at a funeral received in memory of a close family member. (Regulation 18942(a)(16).)
6. Items awarded in an employee raffle, received by the agency from an agency employee who is not acting as an intermediary for another donor. This exception applies when an agency

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holds an employee raffle and the item awarded in the raffle has been obtained with agency funds, or is otherwise an asset of the agency and not donated to the agency by a non-agency source. This exception does not apply to passes or tickets of the type described in Regulation 18944.1. (Regulation 18944.2(a) and (b).)

7. Items received by an employee during an employee gift exchange, so long as the items received are provided by another employee of the agency and the gifts are not substantially disproportionate in value. (Regulation 18944.2(c).)
8. Gifts commonly exchanged between an official and another individual on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. (Regulation 18942(a)(8)(A).)
9. Reciprocal exchanges between an official and another individual that occur on an ongoing basis so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official and no single payment is \$460 or more. For example, if two people get together regularly for lunches and rotate picking up the lunch tab so that each pays approximately half the total value over the course of the calendar year, no gift need be reported. (Regulation 18942(a)(8)(B).)

V. Corrective Action:

Pursuant to Title 7, Code of Federal Regulations, Section 210.19(a)(4), the CDE is required to investigate complaints received or irregularities noted in connection to the operation of the food service program. This requirement extends to the performance of individuals and organizations engaged in contract solicitation, award, and administration. The CDE's oversight and monitoring of agency procurement activities includes a review of the agency's written Code of Conduct and, when necessary, investigations of reported real or apparent conflicts of interest. If a CDE investigation reveals that an agency violated their Code of Conduct, the CDE will issue a finding of noncompliance and require the agency to take corrective action. Consequences for failure to comply with federal regulations are outlined in 2 CFR, sections 200.338 (Remedies for Noncompliance) and 200.339 (Termination), and may include temporary withholding of cash payments, suspension of program funding, denial of all or part of the cost of the noncompliant activity, other remedies to bring the agency into compliance, and termination.

VI. Verification and Record Keeping:

The Statement of Economic Interest Form 700 is completed annually and submitted to the district's Superintendent's office.

As required by 2 *CFR*, Part 200.318(i), SFAs must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following:

- Rationale for the method of procurement
- Selection of contract type
- Manufacturer selection or rejection
- Basis for the contract price

Documents will be retained for a minimum of five years.

Key Words (3):

1. Procurement
2. Codes of Conduct
3. Gifts

Related Documents:

Statement of Economic Interest Form 700

References:

1. USDA Memo SP 09-2015: Written Codes of Conduct and Performance of Employees Engaged in Award and Administration of Contracts
2. Nutrition Services Management Bulletin CNP-01-2015: Procurement Codes of Conduct

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**PRICING AND DISTRIBUTION OF DRY GOODS AGREEMENT
BY AND BETWEEN
ENTITY
AND
THE HEMET UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT is made and entered into this **th day of Month 2020**, between the **ENTITY**, hereinafter referred to as the Vendor, and the **HEMET UNIFIED SCHOOL DISTRICT**, a California public education institution hereinafter referred to as the Recipient Agency. Vendor and Recipient Agency are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

- A. The Recipient Agency, has solicited proposals for the pricing and distribution of dry goods via an Invitation for Bid (the "IFB") #2020-21-02, whereby the Recipient Agency may agree to purchase dry goods for the Recipient Agency's use from the successful bidder(s).
- B. Vendor is the successful bidder under such Invitation for Bid, and the Recipient Agency and Vendor hereby desire to set forth their agreement with respect to the sale to the Recipient Agency, and the purchase from Vendor, of dry goods on the terms and conditions hereinafter set forth.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT

This Agreement shall be valid from July 1, 2020 through June 30, 2021. However, upon mutual agreement of Hemet Unified School District and the Vendor before the end of the Agreement period, the Agreement may be continued for an additional school year. The parties may agree each year to continue the Agreement on a yearly basis for up to a total of three one-year periods, including the 2022-2023 school year. Renewal may NOT include an increase in cost of goods. In the event of a general price decrease, the Recipient Agency reserves the right to revoke the bid award unless the decrease is passed on to the Recipient Agency.

SECTION 2. CONDITIONS

- A. **Provision of Food Products.** Vendor shall provide to the Recipient Agency, from time to time as ordered by the Recipient Agency or their successor or assign (the "Recipient Agency Contact Person") in accordance with the procedure described in Section 2 below,

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food products as described in the Invitation for Bid information attached hereto. Vendor shall make available a product specification sheet about all the submitted products.

- B. **Delivery of Food Products.** The Recipient Agency Contact Person shall order food products from time to time for delivery directly to Recipient Agency or to an approved distributor with use of a Purchase Order. Vendor shall deliver food products of the type, kind and quantity ordered in any such Purchase Order F.O.B. to a point of distribution designated by the Recipient Agency Contact Person from time to time. No additional charges other than Agreed price can be added to the total cost of the delivered product.
- C. **Price.** For pricing and distribution of dry goods to the district shall be net of all applicable rebates, discounts, allowances and credits which are attributable to Recipient Agency's business, including but not limited to the Recipient Agency's purchase volume, and sales information for which, in part, the rebates, discounts, allowances and credits are based, FOB Destination. Vendor agrees to fulfill all terms and conditions of contract, including not limited to prompt sales reporting and hold/recall responsibilities.
The provisions of this agreement shall in no way prohibit the District from making incidental purchases from another supplier for the same services listed herein.
- D. **Rebates.** When rebates are used as Value Pass Through (VPT) method, the Vendor shall rebate the Recipient Agency directly by check, within 30 days of delivery of the product. The Vendor must submit proof of rebate to the Recipient Agency Contact Person by the 10th of the month following the issue of rebate.
- E. **Insurance.** Vendor shall carry and maintain during the entire term of this Agreement the following insurance coverage:
- a. Comprehensive general liability insurance shall be **\$3,000,000.00** per occurrence for bodily injury, personal injury and property damage. And, subject to the same limit for each person on account of one accident, in an amount not less than **\$1,000,000.00**. Automobile liability insurance shall be **\$1,000,000.00** per accident for bodily injury and property damage combined single limit.
 - b. Workers' Compensation Insurance shall be set in accordance with sections 3700 and 3800 of the Labor Code of the State of California. Employer's Liability limits of **\$1,000,000.00** per accident for bodily injury or disease. in such amounts as may be required by law, and
 - c. Such other insurance as is customarily maintained by large-scale processors and distributors Of food products of the type, quality and grade provided for under this Agreement.
 - d. Vendor shall furnish to the Recipient Agency certificates of insurance, signed by an authorized representative of the insurance carrier no later than thirty (30) days after the Agency's board's approval of the Agreement or prior to the first delivery of food products hereunder, whichever occurs first, which certificates shall be endorsed as follows:
 - i. This policy shall not be suspended, cancelled, reduced in coverage or required limits of liability or amounts of insurance or non-renewed until notice has been mailed to the Recipient Agency. Date of suspension, cancellation, reduction or non-renewal may not be less than thirty (30) days after the date of mailing such notice. The insurance afforded by this policy is primary and any other insurance carried by the Recipient Agency with respect to the matters covered by such policy shall be excess and non-contributing.
 - ii. The certificates of insurance and insurance policies required under this Agreement shall name the Recipient Agency indemnities named in the

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Invitation for Bid as additional insured. Facsimile or reproduced signatures are not acceptable. If complete and proper insurance certificates as required hereunder are not delivered to the Recipient Agency within the time period provided in subsection (4) above, the Recipient Agency may declare the Agreement unexecuted and void. The Recipient Agency reserves the right to require complete certified copies of the required insurance policies.

- iii. The insurance companies providing the insurance required under this Agreement shall be subject to the Recipient Agency's prior written approval, which shall not be unreasonably withheld.
- iv. If Vendor fails to purchase and maintain any insurance required under this Section, the Recipient Agency may, but shall not be obligated to, upon five (5) days' written notice to Vendor, purchase such insurance on behalf of Vendor and shall be entitled to be reimbursed by Vendor promptly thereafter or deduct the amount of such premiums from amounts otherwise due to Vendor hereunder. Any amounts expended by the Recipient Agency hereunder shall bear interest from the date expended until repaid to the Recipient Agency at the rate of ten percent (10%) per annum.

F. **Indemnification.** Vendor shall hold harmless, indemnify and defend (with counsel acceptable to the Recipient Agency) the Recipient Agency, the Districts: their boards, directors, employees, agents and consultants from and against any and all obligations, liabilities, claims, losses, damages, costs and expenses (including attorneys' fees and costs) arising from or in connection with (a) any defects in the food products, (b) Manufacturer's conduct or negligent, willful or improper procedures in connection with the discharge of its responsibilities and obligations hereunder (including, without limitation, the processing of food products) or any other negligent behavior or willful misconduct of Manufacturer, or (c) any breach or default by Manufacturer under this Agreement. The terms and provisions of this Section shall survive the expiration or earlier termination of this Agreement.

G. **Default Remedies.** The delivery of defective products, or the breach of any other term or provision of this Agreement by Vendor shall constitute a "Default" of Vendor hereunder. Vendor shall have seven (7) days after delivery of notice of any Default from the Recipient Agency to cure any such Default, other than a Default relating to the delivery of defective products. No cure period shall be provided Vendor with respect to any Default relating to the delivery of defective products. If Vendor fails to cure the Default within the aforementioned cure period (or the Default relates to the delivery of defective products for which no cure period applies), the Recipient Agency may, without prejudice to any other right or remedy of the Recipient Agency, elect to terminate this Agreement by delivery of a written termination notice to Vendor. Immediately upon the delivery of such termination notice, this Agreement shall be terminated and all rights and obligations of the parties hereunder, except those that expressly survive the termination of this Agreement, shall terminate and be of no further force or effect. In addition to the right to terminate the Agreement pursuant in the preceding sentence, the Agency may pursue any other right or remedy that may be available to it at law or in equity, which may include an action for damages measured by all additional costs and expenses incurred by the Recipient Agency or the Districts to procure food products from other sources for the remaining term of this Agreement (including, without limitation, the difference between the price charged by such other sources for the food products and the price that would have been charged for the same or similar food products hereunder).

H. **Assignment.** Vendor shall not assign or transfer, by operation of law or otherwise, any or all of its rights, burdens, duties or obligations under this Agreement (or any part hereof)

without the prior written consent of the Agency, which may be granted or withheld in the Recipient Agency's sole and absolute discretion.

I.

SECTION 3. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES

Each and every provision of law and clause required to be inserted into this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not inserted correctly, then upon application of either party this Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 4. TERMINATION FOR CAUSE AND CONVENIENCE

Pursuant 7 CFR 1780.75, when federal funds are expended by a member district, the Hemet Unified School District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor, in the event vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The Hemet Unified School District also reserves the right to terminate the contract immediately, with written notice to the vendor, for convenience, if in its sole discretion that it is in the best interest of Hemet Unified School District to do so. The vendor will be compensated for work performed and accepted and goods accepted by any member district as of the termination date if the contract is terminated for convenience of the Hemet Unified School District. Any award under this procurement process is not exclusive and the Hemet Unified School District reserves the right to purchase goods and services from other vendors when it is in the best interest of the Hemet Unified School District.

SECTION 5. NOTICES

All notices, requests, demands, consents, instructions or other communications hereunder shall be in writing (which shall include telex, telegram or telecopy) and shall be deemed to have been duly given or made upon transmittal thereof by telex, answer back received, if transmitted on a business day, otherwise on the first business day after transmittal, or on the date of confirmed dispatch if sent by telecopy on a business day, otherwise on the first business day thereafter, or upon the delivery thereof to the telegraph office if sent by telegraph on a business day, otherwise on the first business day thereafter, or three (3) business days after deposit in the mail if sent by certified mail, postage prepaid, return receipt requested, or on the next business day if sent by overnight personal delivery, in each case addressed to the party to which such notice is requested or permitted to be given or made hereunder, at the addresses and facsimile numbers set forth underneath such party's Signature line to this Agreement, or at such other address and/or facsimile number of which such party shall have notified in writing the party giving such notice. For purpose of this Agreement, the term "business day" shall mean a day other than a Saturday, Sunday or any day on which the Recipient Agency is authorized or required by law to be closed.

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Initial you have read _____

SECTION 6. AUTHORITY TO EXECUTE

This Agreement is duly authorized, executed and delivered by Vendor, is the legal, valid and binding obligation of Vendor enforceable against Vendor in accordance with its terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the rights of Agreeementing parties generally), and does not and will not violate any provisions of any agreement to which Vendor is a party or may become a party or to which is it subject or may become subject. Each individual and entity executing this Agreement hereby represents and warrants that he, she or it has the capacity set forth on the signature page hereof with full power and authority to bind the party on whose behalf he, she or it is executing this Agreement to the terms and provisions hereof.

SECTION 7. AMENDMENT

No amendment to or modification of the Agreement shall be valid unless made in writing and approved by the authorized representative of the Vendor and authorized representative of the Recipient Agency. The Parties agree that the requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 8. WAIVER

Waiver by any Party to the Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this agreement. Acceptance by Recipient Agency of any work or services by the Vendor shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 9. LAW TO GOVERN; VENUE

This Agreement is made, entered into and executed in Riverside County, California and the Parties agree that any legal action, claim or proceeding arising out of or connected with this Agreement shall be filed in the applicable court in Riverside County, California. The Parties further agree this Agreement shall be construed, and all disputes hereunder shall be settled, in accordance with the laws of the State of California.

SECTION 10. ATTORNEY’S FEES, COSTS AND EXPENSES

In the event of any dispute between the Recipient Agency, Districts, and Vendor pertaining to this Agreement or the services or products provided for hereunder, the prevailing party (as determined by the court or arbitrator in any such action) shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses Incurred in connection therewith. The term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photo-stating, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding. The terms and provisions of this Section shall survive the expiration or earlier termination of this Agreement.

SECTION 11. ENTIRE AGREEMENT

This Agreement and all documents comprising the IFB constitute the entire and integrated agreement between the parties hereto with respect to the matters set forth therein and supersede all prior negotiations, representations or agreements, either written or oral. The documents comprising the IFB are hereby incorporated into this Agreement and made a part hereof. The Agreement may be amended or modified only by a writing executed by both parties hereto.

SECTION 12. SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, this Agreement has been duly executed by the above-named parties, on the day and year first above written.

AGENCY
HEMET UNIFIED SCHOOL DISTRICT

Deputy Superintendent: _____
Signature

Printed Name: _____

Date: _____

VENDOR
NAME

Authorized Representative: _____
Signature

Printed Name: _____

Date: _____

INSTRUCTIONS
Disclosure of Lobbying Activities (SF-LLL)

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to 31 *U.S.C.* Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget (OMB) for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, U.S. Department of Agriculture, Food and Nutrition Service.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., RFP number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter last name, first name, and middle initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and phone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Contract Terms and Conditions

Initial you have read _____

Debarment, Suspension, and Other Responsibility Matters

As required by Executive Order 12549, Debarment and Suspension, and implemented at 7 *CFR* Section 3017.510, for prospective participants in primary covered transactions, as defined at 7 *CFR* Section 3017.200:

- A. The contractor certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
 - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.
- B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

Contractor/Company Name

Award Number, Contract Number, or Project Name

Name(s) and Title(s) of Authorized Representatives

Signature(s)

Date

Contract Terms and Conditions

Initial you have read _____

**HEMET UNIFIED SCHOOL DISTRICT
DRUG-FREE WORKPLACE CERTIFICATION**

This Drug-Free Workplace Certification form is required from all successful bidders pursuant to the requirements mandated by Government Code Section 8350, *et seq.*, the Drug-Free Workplace Act of 1990. The Drug-Free Workplace Act of 1990 requires that every person or organization awarded a contract or grant for the procurement of any property or service from any State agency must certify that it will provide a drug-free contract or grant awarded by a State agency may be subject to suspension of payments or termination of the contract or grant, and the Manufacturer or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred.

Pursuant to Government Code Section 8355, every person or organization awarded a contract or grant from a State agency shall certify that it will provide a drug-free workplace by doing all of the following:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
- b) Establishing a drug-free awareness program to inform employees about all of the following:
 - 1) The dangers of drug abuse in the workplace;
 - 2) The person's or organization's policy of maintaining a drug-free workplace;
 - 3) The availability of drug counseling, rehabilitation and employee-assistance programs;
 - 4) The penalties that may be imposed upon employees for drug abuse violations.
- c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I, the undersigned, agree to fulfill the terms and requirements of Government Code Section 8355 listed above and will publish a statement notifying employees concerning (a) the prohibition of controlled substance at the workplace, (b) establishing a drug-free awareness program and (c) requiring that each employee engaged in the performance of the contract be given a copy of the statement required by Section 8355 (a) and requiring that the employee agree to abide by the terms of that statement.

I also understand that if the DISTRICT determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of Section 8355, that the contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of Section 8350, *et seq.*

I acknowledge that I am aware of the provisions of Government Code Section 8350, *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

Provisioner _____ Date: _____

Contract Terms and Conditions

Initial you have read _____

IRAN CONTRACTING ACT
(Public Contract Code sections 2202-2208)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a State of California contract for goods or services of \$1,000,000 or more, a bidder must either: a) certify it is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your bidder or financial institution name and Federal ID Number (if available) and complete **one** of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the bidder/financial institution identified below, and the bidder/financial institution identified below is **not** on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/bidder, for 45 days or more, if that other person/bidder will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Bidder Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a bidder/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Bidder Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		<i>Date Executed</i>

REFERENCES

1. Have you ever had any direct or indirect business, financial, or other connection with any official, employee, or consultant of the District? Yes No

a) If Yes, identify and elaborate and discuss any potential, apparent, or actual conflict of interest:

2. Each Bidder must include the following reference information:

a) List at least three clients for whom you have provided similar services. Include the names, addresses, telephone numbers, and e-mail addresses of the persons who may be contacted. Information obtained through the references will be evaluated by the District.

Name	Address	E-mail Address	Phone Number
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**Nutrition Services
Certification for "Buy American" Provision**

This Certification is required for all items domestically grown and processed in the United States which exceeds 50% domestic end product. Bidders are to provide certification for all products derived from domestic products to include Fruit, Vegetables, Grains, Legumes and Oil based products. Failure to certify such items may disqualify award of such line item.

I certify that the following item(s) are produced and processed in the U.S. and contains over 51% of its agricultural food components, by weight or volume, from the U.S.

Note: A manufacture certification on company letterhead may be substituted for this form as long as the exact same language listed above is used.

Line Item Number	Description

Every effort shall be made to follow the Buy American Provision required by the National School Lunch Act to include domestically grown products in school food programs. By signing this certification, the Proposer is acknowledging the Buy American requirements per Instructions and Information.

Company _____

Print Name: _____ Date: _____

Signature: _____ Title: _____

Contract Terms and Conditions

Initial you have read _____